

MRS. EDITH POPWELL

FEBRUARY 21, 1956.—Committed to the Committee of the Whole House and ordered to be printed

Mr. LANE, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H. R. 6321]

The Committee on the Judiciary, to whom was referred the bill (H. R. 6321) for the relief of Mrs. Edith Popwell, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

An identical bill passed the House during the 79th Congress, but no action taken by the Senate. This is the only bill that has been filed in behalf of Mrs. Popwell since that time. After a careful review of the file, your committee feels that it is a meritorious one and should be passed.

STATEMENT OF FACTS

It appears that on March 19, 1943, at about 8:45 p. m., an Army 2½-ton truck, operated by an enlisted man on official business and in which a noncommissioned officer was riding as a passenger, was proceeding west on South Dixie Highway in Miami, Fla., at an estimated speed of 25 miles per hour, approaching the intersection of South Dixie Highway with Southwest 17th Avenue. At the same time a 1937 Chevrolet sedan, owned and operated by Spencer W. Popwell, Jr., 1021 Southwest 2d Street, Miami, and in which Robert A. Williams, 1025 Northwest 11th Avenue, Miami, was riding as a passenger, was proceeding north on Southwest 17th Avenue, approaching said intersection at an estimated speed of 50 miles per hour. The intersection was protected by an automatic traffic signal light and there also was a dim street light at the intersection. The view at the intersection was unobstructed both for vehicles proceeding west on South Dixie Highway and north on Southwest 17th Avenue. As the Army truck and the civilian vehicle approached the intersection the traffic light was red for traffic on Southwest 17th Avenue, and green for traffic on

South Dixie Highway. The Army driver stated that when he was about 10 feet from the intersection the civilian vehicle suddenly appeared at a distance of about 10 or 12 feet to his left, that he applied his brakes and turned the Army truck as far as possible to the right, but that the left front part of the truck struck the civilian vehicle in about the center of the right side. The collision occurred approximately in the center of the intersection, and the Army truck pushed the civilian vehicle across the intersection to the northwest corner and into a telephone pole. The civilian car was extensively damaged and Mr. Williams was killed instantly and Mr. Popwell sustained injuries from which he died within a very short time.

The War Department in its report dated May 3, 1945, states that the accident was caused solely by the negligence of Mr. Popwell in entering the intersection of South Dixie Highway and Southwest 17th Avenue when the traffic signal was red for traffic proceeding north on Southwest 17th Avenue and that there was no negligence on the part of the Army driver.

Your committee has gone into this claim thoroughly and has photographs indicating that the Chevrolet driven by the civilian showed the full radius of the telegraph pole, yet all the testimony offered in the grand jury trial statements made by the Army truck driver indicate that he was driving 25 miles per hour at the time of the accident, and he stated that he swerved his truck to the right and struck the Chevrolet in the center; and then, pushing it 30 feet across the intersection, made the indentation in the Chevrolet car the radius of the pole. The photographs further show that there were 30-foot skid marks when he first applied the brakes at the time of the impact. The length of the skid marks and the indentation of the pole in the car indicate definitely that the driver was going at a high rate of speed.

The War Department states in its report that the civilian car came through a red light. A rider with the Army truck operator, a noncommissioned officer, who saw nothing of the accident, testified that he had seen and heard nothing. The man riding in the car with Mr. Popwell was killed instantly, and Mr. Popwell sustained injuries from which he died very shortly. No one living had seen the accident other than the truck operator. This is probably the reason why this man who operated the civilian car and whose car showed no skid marks whatever "came through a red light." There is nobody to testify he came through a red light or a green light. But while there is no one to defend him, certainly it appears that the operator of the truck took full advantage of it, and said that the civilian operator came through a red light. The noncommissioned officer riding with the operator of the Army truck did not verify the statement made by the driver. Therefore, he was the only one to say that the civilian driver was negligent. Therefore, your committee recommends favorable consideration to this bill in the sum of \$7,500.

Appended hereto is the War Department report, together with other pertinent evidence.

WAR DEPARTMENT,
Washington, D. C., May 3, 1945.

Hon. DAN R. McGEHEE,
*Chairman, Committee on Claims,
House of Representatives, Washington, D. C.*

DEAR MR. McGEHEE: The War Department is opposed to the enactment of H. R. 1642, Seventy-ninth Congress, a bill for the relief of Edith Popwell.

This bill would authorize and direct the Secretary of the Treasury to pay to Edith Popwell, Miami, Fla., the sum of \$10,000 * * * in full settlement of all claims of the said Edith Popwell against the United States on account of the death of her husband, Spencer W. Powell, Jr., as the result of personal injuries sustained in a collision, on March 19, 1943, at the intersection of the Dixie Highway and Southwest Seventeenth Avenue, Miami, Fla., between the automobile which the said Spencer W. Popwell, Jr., was driving and a United States Army truck.

On March 19, 1943, at about 8:45 p. m., an Army 2½-ton truck, operated by an enlisted man on official business and in which a noncommissioned officer was riding as a passenger, was proceeding west on South Dixie Highway in Miami, Fla., at an estimated speed of 25 miles per hour, approaching the intersection of South Dixie Highway with Southwest Seventeenth Avenue. At the same time a 1937 Chevrolet sedan, owned and operated by Spencer W. Popwell, Jr., 1021 Southwest Second Street, Miami, and in which Robert A. Williams, 1025 Northwest Eleventh Avenue, Miami, was riding as a passenger, was proceeding north on Southwest Seventeenth Avenue, approaching said intersection at an estimated speed of 50 miles per hour. The intersection was protected by an automatic traffic signal light and there also was a dim street light at the intersection. The view at the intersection was unobstructed both for vehicles proceeding west on South Dixie Highway and north on Southwest Seventeenth Avenue. As the Army truck and the civilian vehicle approached the intersection the traffic light was red for traffic on Southwest Seventeenth Avenue and green for traffic on South Dixie Highway. The Army driver stated that when he was about 10 feet from the intersection the civilian vehicle suddenly appeared at a distance of about 10 or 12 feet to his left, that he applied his brakes and turned the Army truck as far as possible to the right, but that the left front part of the truck struck the civilian vehicle in about the center of the right side. The collision occurred approximately in the center of the intersection, and the Army truck pushed the civilian vehicle across the intersection to the northwest corner and into a telephone pole. The civilian car was extensively damaged and Mr. Williams was killed instantly and Mr. Popwell sustained injuries from which he died within a very short time.

On March 20, 1943, the Army driver made the following sworn statement:

"On March 19, 1943, I * * * started back to Homestead, Fla., and got on South Dixie Highway and was going west on it. As I approached Southwest Seventeenth Avenue, I saw that there was a traffic light there and it showed green in my direction. I slowed and did not see anything approaching so I proceeded to cross the street. Suddenly a car appeared coming from the south and going north. The front of my truck came in contact with the right side of the automobile. I applied the brakes and turned to the right trying to avoid impact. The other car came to a stop against a telephone pole on the northwest corner of the intersection with the truck in contact with it. I backed away from the wreck and got out of my truck to render assistance.

"This accident occurred about 8:45 p. m. and it was dark and the road was dry. I had the lights on my car burning, but I did not see any lights on the car involved. I later found out that the other car was driven by S. W. Popwell of 1021 Southwest Second Street, Miami, Fla. and that he had with him as a passenger, Robert A. Williams, aged 20, of 1025 Northwest Eleventh Avenue, Miami, Fla. Mr. Popwell was thrown clear of the car but Mr. Williams was pinned inside, and I understand that both of them have since died. At the time of the impact, I was driving not over 25 miles per hour. There is a governor on the truck I was driving and this will not permit it to be driven over 40 miles per hour. The other car appeared suddenly and I would estimate that it was going at about 50 miles per hour. I am confident that the light was green in my direction, and I afterward found out that it worked both ways, therefore it must have been red in the direction from which the other car came.

"I had not had a drink of intoxicating liquor at all during March 19, 1943.

"I was driving a GMC 2½-ton cargo truck, 6 by 4 model CCW 653, USA No. 4310486. The car driven by Mr. Popwell was a 1937 Chevrolet coach, two-door sedan bearing Florida 1942 license plate No. 1D59850."

A coroner's inquest into the death of Spencer W. Popwell, Jr. and Robert A. Williams was held before O. B. Sutton, justice of the peace and coroner ex officio

in and for the Third District of Dade County, Fla., on March 30, 1943. The driver of the Army vehicle involved in this accident testified at the coroner's inquest and his testimony was in substantial accord with the above-quoted statement given by him on March 20, 1943. He further testified that when he first saw the civilian vehicle his truck was about 10 feet from the intersection, at which time the civilian vehicle was about 10 or 12 feet to his left.

The noncommissioned officer who was a passenger in the Army vehicle was dozing as the truck approached the intersection and did not know the color of the traffic light or the speed of either vehicle before the accident. Neither Mr. Popwell nor Mr. Williams were able to make any statement after the accident and before they died. There were no other witnesses to the accident.

At the coroner's inquest M. C. Tucker, a police officer of the Miami Police Department, testified that he arrived at the scene of the accident shortly after the collision occurred; that there were tire marks made by the Army vehicle extending 33 feet west from the point of impact with the civilian vehicle; that approximately 15 or 16 feet of the tire marks were a tire burn and the remainder to the point of impact were skid marks; that there were no tire marks made by the civilian vehicle prior to the collision; that there were skid marks about 30 feet in length from the point of impact to the telephone pole on the northwest corner of the intersection against which the civilian vehicle was pushed; and that it was his opinion, based on the tire marks made by the truck and the nature of the impact, that the speed of the Army truck was about 35 miles per hour.

J. A. Stibbs, another police officer of the Miami Police Department who also arrived at the scene of the accident shortly after it occurred and who testified at the coroner's inquest, described the tire marks substantially as Mr. Tucker had described them and stated further that he was of the opinion that the speed of the Army truck was about 25 miles per hour; that his opinion was based on the fact that the Army truck was only slightly damaged at the front thereof; and that he believed that the Army driver failed to see the civilian vehicle sooner than he did because the headlights of the civilian vehicle were painted so that there was only a slit across the middle of the lens through which the light could pass.

The records of the War Department show that at the time of his death Mr. Popwell was 32 years of age and was employed by the Pan-American Airways, at Coconut Beach, Fla., as an airplane mechanic at an average wage of \$60 per week. He left surviving his wife, Mrs. Edith B. Popwell, and a son, Spencer W. Popwell III, who was born after the death of his father, both of whom were dependent upon Mr. Popwell for their support.

At the conclusion of the testimony at the inquest the Coroner's jury rendered the following verdict:

"* * * that the said S. W. Popwell and Robert A. Williams came to their death in the following manner, to wit: As a result of a collision between a Chevrolet automobile in which they both were riding and a GMC 2½-ton Army truck, driven by one Glenn W. Morris, and that said accident was unavoidable.

The records of the War Department also show that Mrs. Popwell incurred hospital and burial expenses as a result of the injury and death of her husband in the aggregate amount of \$1,022.80, as follows:

James M. Jackson Memorial Hospital, Miami, Fla.....	\$14. 30
Joseph McCann Funeral Home, Miami Fla.....	600. 00
Graceland Memorial Park Mausoleum.....	408. 50
Total.....	1, 022. 80

The 1937 Chevrolet coach which was owned by Mr. Popwell and which he was operating at the time of the accident was damaged beyond economical repair. Mrs. Popwell states that the automobile was sold in its wrecked condition for \$35 or \$40, but the records of the War Department do not show the reasonable value of the automobile before the accident.

At the time of this accident, sections 41 (c) (1) and 43 of ordinance No. 2594, of the city of Miami, provided as follows:

"(c) Red alone or 'stop.'

"(1) Vehicular traffic in the city facing the red signal shall stop before entering the nearest crosswalk bordering the intersection, or at such other point which may be indicated by a clearly visible line, and shall remain standing until green or 'go' shall be displayed alone * * *.

* * * * *

"Obedience to automatic traffic signals.—That hereafter it shall be unlawful for the driver of any vehicle, or animal, to drive any such vehicle or animal onto, past,

or across any crosswalk, street intersection, railroad crossing, bridges, or stop line where vehicles are directed to stop by traffic control lights, contrary to or in disobedience of the directions indicated by any such automatic traffic signal or any flashing red or yellow traffic signal, as defined in this article."

The evidence fairly establishes that the accident and resulting injuries and death of Mr. Popwell were caused solely by his negligence in entering the intersection of South Dixie Highway and Southwest Seventeenth Avenue when the traffic signal was red for traffic proceeding north on Southwest Seventeenth Avenue in violation of sections 41 (c) (1) and 43 of the ordinance of the city of Miami hereinbefore referred to, and were not caused by any negligence or wrongful act or omission on the part of the driver of the Army vehicle. The evidence further shows that Mr. Popwell was operating his automobile at an excessive rate of speed and did not slow down or attempt to stop at any time before the collision. The Army driver, when he saw Mr. Popwell's car proceeding into the intersection against the red light, applied his brakes and did everything possible to avoid an accident but, because of the high rate of speed of the civilian vehicle, was not able to avoid a collision. Under the facts and circumstances of this case, there is no legal basis for a claim against the United States for damages sustained as a result of the death of Mr. Popwell and the War Department, therefore, recommends that the proposed legislation be not favorably considered.

The fiscal effect of the bill is manifest.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

HENRY L. STIMSON, *Secretary of War.*

IN THE MATTER OF THE INQUISITION ON THE DEAD BODY OF SPENCER W. POPWELL, JR., AND ROBERT A. WILLIAMS

IN JUSTICE OF THE PEACE COURT, THIRD DISTRICT, DADE COUNTY, FLA.

Witnesses: Charge to jury, verdict of jury, Detective M. C. Tucker, Police Officer J. A. Stibbs, Glenn W. Morris, Joseph Hockvar, G. T. Gaunt.

Date of inquest: March 30, 1943, at 9:30 a. m.

Present: O. B. Sutton, coroner ex officio, third district; L. R. Geiger, acting constable, third district; E. F. P. Brigham, representing State; Robert R. Taylor, county solicitor; Capt. A. Shelby Winstead, Homestead Air Base; Felber Maasdam, first lieutenant, Signal Corps, Wright Field, Dayton, Ohio.

Reported by Mildred S. Brasher, 2128 Ponce de Leon Boulevard, Coral Gables, Fla.

IN THE MATTER OF THE INQUISITION ON THE DEAD BODIES OF SPENCER W. POPWELL, JR., AND ROBERT A. WILLIAMS

IN THE JUSTICE OF THE PEACE COURT, THIRD DISTRICT, DADE COUNTY, FLA.

Be it remembered, That on the 30th day of March A. D. 1943, before the Honorable O. B. Sutton, justice of the peace and coroner ex officio in and for the Third District, Dade County, Fla., an inquisition was held on the dead bodies of Spencer W. Popwell, Jr., and Robert A. Williams, at 9:30 o'clock in the morning at 2128 Ponce de Leon Boulevard, Coral Gables, Dade County, Fla.

Thereupon, a jury having been duly impanelled, the foreman of the said jury, Arthur W. Brigham, was charged by the coroner as follows:

"You do solemnly swear that you will diligently inquire and true presentment make, how, and in what manner, and by whom Spencer W. Popwell, Jr., and Robert A. Williams, who here lie dead, came to their deaths, and you will deliver to me, as coroner of this county, a true inquest thereon, according to such evidence as shall be laid before you and according to the best of your knowledge, so help you God."

The coroner then charged the balance of the jury, consisting of John Seaman, C. M. Barnes, A. B. Halsell, Clayton Collins, Fred H. Fischer, as follows:

"Such oath as your foreman has now taken before you on his part, you and each of you will keep and observe on your respective parts, so help you God."

Whereupon, all witnesses present were by the coroner sworn in the following language:

"You and each of you do solemnly swear that the testimony you are about to offer in this cause, shall be the truth, the whole truth, and nothing but the truth, so help you God."

Thereupon, the coroner continues with his charge to the jury, as follows:

"I will now read you gentlemen the statutory charge which is given the jury at all these inquests:

"You will, upon your oaths, declare upon the death of one Spencer W. Popwell, Jr., and Robert A. Williams; whether they died of felony or mischance or accident, and if of felony, who were the principals and who were the accessories, with what instrument they were struck, or wounded, and so of all prevailing circumstances which may come by presumption, and if by mischance or accident, whether by the act of man, and whether by hurt, fall, stroke, drowning, or otherwise, also to inquire of the persons, if any, who were present, the finder of the body, his relatives or neighbors; if he was killed in the same place where the bodies were found, and if elsewhere, by whom and how the bodies were brought thence, and if they died of their own act, to inquire of the manner, means, or instrument, and of all the circumstances attending it."

Whereupon, Detective M. C. Tucker was called as a witness, and having first been duly sworn, testified as follows:

Judge SUTTON. Mr. Tucker, we will get to you first. Which of you gentlemen want to question first?

Mr. TAYLOR. I will question him. Will you please state your name?

The WITNESS. M. C. Tucker, police officer, city of Miami, Dade County, Fla.

Q. What particular work do you do in connection with the police department of Miami?—A. I am an investigator of accidents.

Q. Did you on behalf of the police department investigate an accident that occurred on the Federal highway or the South Dixie Highway at Southwest Seventeenth Avenue on the 19th day of this month?—A. Yes; 8:40 p. m. is the time we received the call and we arrived at the scene shortly thereafter, about 8:45.

Q. What did you observe there?—A. A truck and an automobile had been involved in an accident.

Q. Will you describe the truck?—A. The truck was a 10-wheel job belonging to the United States Army, driven by Glenn W. Morris of the Homestead Air Base.

Q. What type was the other car?—A. A Chevrolet coach, two-door sedan, 1937 model.

Q. Whom did you learn was in the Chevrolet car?—A. S. W. Popwell as the driver and Robert A. Williams as the passenger.

Q. When you arrived on the scene were they already dead?—A. S. W. Popwell was dead and Williams' body was there.

Q. Where?—A. Laying on the front seat with his head against the right door.

Q. Were there any wounds or contusions on his body?—A. Yes; the handle on the door pierced the skull, the handle on the right door.

Q. How many passengers were in the Army truck?—A. Two; one and the driver.

Q. What physical evidence did you find at the accident?—A. We found that the Chevrolet car was headed north on Seventeenth Avenue, and the Army truck was headed west on the Federal highway. The Army truck had applied the brakes 33 feet before he struck the Chevrolet car.

Q. How did you know that?—A. By the tire marks from the point of impact the first 15 or 16 feet was a tire burn and the last few feet, the marks were skid marks. It was lack of skid marks which indicates no brakes were applied by the car.

Q. How far did the skid marks go?—A. Sideways in a northwesterly direction to the corner against the telephone pole, a distance of 30 feet from where the Chevrolet car was first hit.

Q. Was that a total distance of 66 feet?—A. 63 feet.

Q. That is what you observed about the Army truck?—A. Yes.

Q. What was the condition of the passenger car?—A. It was demolished. The passenger car was struck broadside on the right side just back of the hood.

Mr. BRIGHAM. Was it crushed together?

The WITNESS. Yes; mashed together like a tin can. The front seat from the blow was knocked completely out of the car and the left front door and Mr. Popwell were 20 feet from the car.

Q. Mr. Popwell and the left front door were 20 feet away?—A. Yes.

Q. What direction were they?—A. Northwesterly direction.

Mr. TAYLOR. Mr. Popwell's body was there?—A. Yes.

Judge SUTTON. You stated that the handle of the front door had pierced this man's head and now you state that his body was 20 feet away.

The WITNESS. Mr. Popwell was 20 feet away, and Mr. Williams was still in the car.

Mr. BRIGHAM. Have you photographs you can show the jury of the car?

The WITNESS. Yes, I do.

Q. Can we identify them, Judge?—A. Yes, and we will mark them for evidence.

Mr. BRIGHAM. Mr. Tucker, please take the photographs for identification No. 1 and explain to the jury what it is.

Mr. TUCKER. This will show the Chevrolet coach with the left side resting against the telephone pole and where the front seat was.

Mr. TAYLOR. That is looking in what direction? In a northeasterly direction?

The WITNESS. No.

Q. I am talking about where the telephone pole stood?—A. It was on the northwest and in a southwesterly direction. That Federal Highway always has messed me up.

Mr. BRIGHAM. The photographer's camera was pointing in what direction?

The WITNESS. The southeast.

Q. Which direction was the camera pointing for No. 2 photograph?—A. That would be pointing in a south, almost a southerly direction.

Q. And in picture No. 3 in what direction is the camera pointing?—A. In a northwest direction.

Q. Was that the direction that the passenger car was shoved by the truck?—A. That is right.

Mr. BRIGHAM. Let the jury see photograph No. 3 first if you don't mind.

Mr. TUCKER. (exhibiting said photograph to jury). That shows the right side of the car, Mr. Popwell had been removed at the time. For the record, Mr. Popwell died at 2:48 the same night, 2:48 a. m.

Mr. BRIGHAM. Was there another photograph, Judge?—A. No; just the three.

Q. I wish to call your attention to photograph No. 2—the black object at the right of the car; what is that?—A. The left front door of the passenger car involved in this accident.

Q. Point it out to the jury. How far away is it?—A. About 20 feet.

Q. How did the door get there?—A. When the truck hit the car, it tore the door off.

Q. Was the Army truck empty?—A. It was loaded.

Q. Can you explain how the truck skidded?—A. The skid is on a straight line, then it made a slight curve to the right.

Q. Do you have a photograph showing approximately where this curve is?—A. Yes; here it is.

Q. From your observation; is that correct?—A. Yes, sir.

Mr. BRIGHAM. Judge, we would like to put that in as evidence, if you have no objection.

Judge SUTTON. Put that in as evidence, marked "No. 4."

Mr. BRIGHAM. Would you kindly point out to the jury, Mr. Tucker, on the diagram, the direction of the car?

A. This is Northwest Seventeenth Avenue, headed north. This is headed west on the highway. No. 1 is the truck and No. 2 is the passenger car. The coach was driven north on Seventeenth Avenue and the Army truck was driving west on the Federal highway; the diagram shows to the best of my opinion, right where the accident happened.

A JUROR. Weren't there skid marks behind the No. 2 car?—A. No. (Jury inspects photographs.)

Mr. TUCKER. This is the No. 2 car, the Chevrolet car, and this is No. 1 car, the United States Army truck. This is the northwest and this is the southwest.

Mr. BRIGHAM. Mr. Tucker, from your investigation and from the physical evidence you found at the intersection, could you tell which car entered the intersection first?

The WITNESS. No; it was impossible. It all depends on the amount of speed each car was making and it was impossible to tell without seeing them.

Q. Could you tell whether the Army truck struck the car on the north or south side?—A. On the north side.

Q. Could you tell from your investigation approximately how far across the highway the passenger car had proceeded before it was struck?—A. The front end of the passenger car had crossed the center of the highway; to the best that I can judge, his back wheel of the passenger car was just about in the center of the highway putting the car in the center lane.

Q. Were there any obstructions on the southeast corner?—A. No, no obstruction; it is a wide-open intersection.

Q. Both drivers then had a view which was clear as far as obstruction was concerned?—A. This is right.

Q. I take it—are there any street lights on the corner?—A. Yes; very dim.

Q. The pole against which the passenger car was crushed—does that have a light on it?—A. I don't know, I could not say about that.

Q. Does your photograph show it?—A. No.

Q. Could you see the opposite corner of the street?—A. Yes, there is one on that corner, but which corner I could not say.

Q. Mr. Tucker, do you have approximate idea how wide the Federal highway is at Seventeenth Avenue there?—A. I do have those measurements on here—the pavement on the Federal highway is about 40 feet wide, and Seventeenth Avenue is approximately 35 feet wide.

Q. About how long was that Chevrolet, do you have any idea about that?—A. It would only be an estimate and not accurate. My estimate would be about 16 feet from bumper to bumper.

Q. Then the front end of the Chevrolet before it was struck would be approximately 36 feet across the Federal highway?—A. From the west curb; yes, sir.

Q. You mean from the south curb?—A. Yes; that is right.

Q. And you say the highway was approximately 40 feet wide.—A. Yes, sir.

Q. Would that have any bearing on your conclusion and from your investigation as to whether the Chevrolet entered the intersection first?—A. Well, it was like my previous testimony, it would depend on the amount of speed that each car was making; if they were both running the same speed, the Chevrolet entered the intersection first.

Mr. TAYLOR. Did you make every effort to find witnesses who saw this accident?

The WITNESS. Yes; I did. I exhausted every bone in my body to try to find someone who saw the light, too.

Q. And you were not successful?—A. No.

Q. Could the driver of the Chevrolet talk?—A. Yes.

Q. Did you talk to him?—A. Yes.

Q. Did you talk to the man with him?—A. Yes. I asked the driver how fast he was going and he said "about 25."

Q. Were either of them drunk?—A. The rider said he had a couple of drinks of wine.

Q. Did either the driver or the rider see the light, the color?—A. The rider said he wasn't looking at the light at the time of the accident, and the driver of the truck said the lights were green.

Q. How long had the light been green—did he say?—A. No; I asked him if he had a green or red and he said green.

Q. Did he say how fast the Chevrolet car was coming?—A. He said "pretty fast." He didn't estimate the amount of speed.

Mr. TAYLOR. I guess that is all.

Mr. BRIGHAM. Did he say the Chevrolet was going fast or slow at the time it struck?

The WITNESS. Fast.

Judge SUTTON. Does your report show whether or not it was raining or dry?—

A. It was dry.

Q. Captain Winstead, are there any questions you want to ask?—A. I didn't get clearly which man was drinking?

Mr. TUCKER. That was the man with the driver of the truck.

Captain WINSTEAD. It wasn't the driver?

The WITNESS. No; he was sober.

Q. And there was a traffic light there?—A. Yes.

Judge SUTTON. For the record, we should have your name, Captain.

The WITNESS. A. Shelby Winstead, captain, Air Corps, Homestead Air Base, Homestead, Fla.

Q. Captain, from your examination of the scene, could you form an opinion as to the speed of the respective vehicles?—A. There was nothing from which to form an opinion either on the civilian car or on the truck but from the amount of impact and the skid marks.

Q. Will you state your opinion?—A. Well, from the weight of the truck and my experience in weights I would say the truck was going in the neighborhood of 35 miles per hour, it was a 10-wheel job, very heavy.

Mr. TAYLOR (to Captain W.). How fast did the driver say he was going?

The WITNESS. Approximately 25 miles per hour.

Mr. BRIGHAM. What is the speed limit on that road?

The WITNESS. 30 miles per hour.

Mr. TAYLOR. Is that permissible at that time of night?

The WITNESS. Yes.

Mr. TAYLOR. Well, he was going too * * *

Whereupon Witness M. C. Tucker was dismissed, and the next witness called.

A JUROR. Judge, I would like to ask a question of that witness.

Judge SUTTON. Go ahead.

JUROR. Are there any stop signs at that intersection besides the signal light?

The WITNESS. No; not that I recollect. There are railroad crossing signs on the north side of the highway.

Judge SUTTON. But this car was going north so it would not have any bearing on this case.

Mr. TUCKER. There are crossing signs marking the railroad tracks.

Mr. BRIGHAM. May I examine that picture?

Judge SUTTON. Mr. Tucker, is that traffic light in the intersection hung so it can be seen from any direction?

The WITNESS. Yes; either direction it can be seen clearly.

Q. Is it high enough?—A. Yes.

Captain WINSTEAD. I would like to ask him if it was operating when he arrived at the scene?

The WITNESS. Yes; it was.

Judge SUTTON. Is that an ordinary signal light with red, green, and yellow signals?

The WITNESS. Yes.

Q. Any other questions? (Answered negatively.) Witness dismissed, and next witness called.

Whereupon, J. A. Stibbs, was called as a witness, and having been duly sworn, testified as follows:

Judge SUTTON. You were previously sworn, weren't you?

The WITNESS. Yes.

Mr. BRIGHAM. Please state your name and position.

The WITNESS. J. A. Stibbs, police officer, city of Miami, Dade County, Fla.

Q. Mr. Stibbs, did you investigate an accident which occurred on March 19 at Seventeenth Avenue and the Federal highway?—A. Yes.

Q. Was that an accident between a Chevrolet car and an Army truck?—A. Yes.

Q. How long after the crash did you arrive there?—A. I received the call at 8:40 p. m. and arrived at 8:48 p. m.

Q. Please state what you found there.—A. I found one car up against a telephone pole, headed north, and an Army truck parked about 12 feet back from the car. In other words I would say this is the car and this is the Army truck, back of it [illustrating].

Q. What damage, if any, did you find to the Army truck?—A. About \$25 worth.

Q. What part was damaged?—A. The upper part of the hood was bent a little.

Q. Any glass missing?—A. No.

Q. What was the width of the passenger car compared to its normal width?—

A. I would like to see that photograph [examining photograph]. I would say the car on one side, where shown, was dented in, oh, 10 or 12 inches, and the other side was mashed in.

Q. Was it collapsed like an accordion, for example.—A. No; I would say it was mashed in 10 or 12 inches on the pole side and maybe 8 inches on the other.

Q. Did you take those pictures?—A. No; Officer Gillette took them.

Q. Are they correct as to what you say at the accident.—A. Yes; only this door here was back of the car, leaning against the car, this door here was leaning up against here when I arrived on the scene.

Mr. TAYLOR. That is exhibit No. 3; is that right?

Mr. BRIGHAM. Yes. Did you observe any skid marks on the highway?

The WITNESS. A. Yes, approximately 8 or 10 feet was kind of a burn, or skid mark, and it would appear that someone was going to slow down and then released his brakes.

Q. Is that 33 feet the number of feet of burn marks? Was that before the impact?—A. It was at the time of the impact.

Q. How far did you say you observed skid marks at the point of impact?—A. None at all except the car that was hit dug a hole in the ground and was pushed sideways, but there is no skid mark.

Q. Is it your opinion that the truck released the brakes after hitting the car?—

A. In my opinion he applied them and released them and applied them again.

Q. After it hit the car, did I understand you clearly to say there were no skid marks of the truck?—A. I did not see any—the mark left there was from the car being pushed sideways.

Q. No other skid marks?—A. Not from the truck.

Q. Could you tell me from your investigation whether or not the Chevrolet car moved forward after the impact?—A. Yes; it moved in the direction of approximately, maybe 8 or 10 feet. In other words, I will use * * * from there to here where the pole is, it curved over this way and I would say from the straight line over, it would be about 10 or maybe 8 feet.

Judge SUTTON. What direction was that from the point of impact?

The WITNESS. The Army truck was going west or west southwest, the highway curves. Seventeenth Avenue runs north and south and this has a small curve there. Anyone that is familiar with the highway; they will know that. The Army truck was going south, I would say, on the Dixie Highway and the other car was going north.

Mr. BRIGHAM. Approximately how far was, in its line of travel did the truck go when it crushed the car between the truck and the pole?

The WITNESS. The question you asked is how far did the Army truck travel out of line?

Judge SUTTON. Yes.

The WITNESS. Not more than 5 or 6 feet at the most.

Judge SUTTON. Is the pole that close to the highway?

The WITNESS. Yes; I might state this—at that point where the car was up against the pole, the Dixie Highway goes south this way and right at Seventeenth Avenue has this north lane on the highway and if you, if this north lane was to proceed straight on, the car would be in the street because there is a jog there, the highway twists this way and narrows down right at Seventeenth Avenue.

Q. Does the parkway go that way?—A. No; it veers to the west and that would be more to the west.

Mr. BRIGHAM. That clears it up. You heard Officer Tucker's testimony as to the width of the street; is that your idea of same.

The WITNESS. Yes; the streets are 32 feet wide there. There are two lanes on the Dixie Highway and Seventeenth Avenue, separated by a parkway.

Q. This pole where the car hit is where the light was; is that right?—A. Yes.

Q. There is a street light there?—A. Yes; on the pole and it was burning when I arrived.

Q. Is that light dimmed out there?—A. No; it is one of these high globe lights in a very, not a very bright light. I might say that the traffic light was operating because I checked that, and all the lights were burning all the way around when we arrived and when we left.

Q. Did you talk with the driver of the truck?—A. I did.

Q. What did he say?—A. I arrived there and seeing the truck, asked who was the driver and he says "I am", and I says " * * * back out of the way." I was with Officer Tucker when he smelled his breath, and he was cold sober. I couldn't smell anything. The staff sergeant acknowledged that he had had one or two drinks, I don't remember but he was the passenger, he wasn't driving. I asked him if the light was green and then he said he wasn't looking at it, there was so many people there, and he said the last thing he seen, it was green but he wasn't paying any particular attention, but then the driver stated definitely that the light was green.

Q. Did you hear the sergeant tell Officer Tucker he did not see the light?—A. No; I was making out reports and Officer Davenport was taking care of the people and getting them back and trying to get witnesses.

Q. Were you in the radio car?—A. Yes; with Officer Davenport.

Q. From your investigation, did you form any opinion as to the speed of the truck?—A. In my opinion, if the truck was going more than 25 miles an hour at the time of the impact, it would have done more damage.

Q. Could it have done any more damage?—A. To the truck, it would have.

Q. How about the passenger car?—A. I can only state my opinion.

Q. Did you talk to the driver of the truck?—A. Yes. I asked him if he saw anything and he says "No," and I says "when did you first observe the car" and he says, "When it was about 12 or 15 feet from me," then I asked him about the skid marks, and he says he was slowing down because there was a light and intersection, and that is why I concluded, why he applied his brakes and then released them; that if he had seen the light, he would have applied the brakes and left them on until the impact. I said, "You didn't see the car" and he says "No; not until it was right in front of me." On taking the pictures, I surmised

that he could not see the car. We are supposed to have our running lights on and the top half is painted and the lower half bright; you will notice that on picture No. 2, the upper and lower half is painted on the car with a slit in the middle, and that is why he did not see the car.

Mr. TAYLOR. You mean the lower part of the headlight was painted with a slit through the middle?—A. Yes.

Mr. BRIGHAM. You learned that the driver of the passenger car was a Pan-American Airways employee and was employed with, and was complying with the regulations of, the Army at the beach, didn't you?

The WITNESS. I differ with you on that point. It used to be that he had to have slits at the beach, but since then there is an order out covering Dade County and the beach has its own ordinance drawn up with regulations that a light shall be painted 1 inch below the center of the bulb and the bottom half exposed.

Mr. BRIGHAM. When did that go into effect?

The WITNESS. A couple of months ago, about.

Q. And before that it was a slit proposition?—A. Yes; and we painted one-half, the upper half, but that has been changed. And another thing I want to get straight, Mr. Taylor, is that our speed limits are 30 miles per hour in the daytime until the lights go on and then 25 miles per hour.

Q. Did you ask the driver of the truck where the truck was when the truck stopped?—A. He said it had not been moved after the accident. It stopped right there.

Q. Was the car, where was the car?—A. Resting about 12 or 15 feet away.

Q. Taking an imaginary line through the middle of the avenue and through the middle of the highway, was the point of impact where the two lines would cross?—

A. Yes; it would be on Seventeenth Avenue, with the Pan-American car resting on its right side. Just a moment, I want to get this right. The impact then would be—this is the Dixie, it was on this side, it would be approximately here [indicating on photograph].

Mr. TAYLOR. How many feet west of the middle of the highway, I mean north of the highway?

The WITNESS. That I did not measure, but I think it would be about 3 feet.

Q. How far was the car shoved sideways?—A. Well, from where the car stopped it would be about 3 feet.

Judge SUTTON. Do you mean the point of collision?

The WITNESS. Yes.

Mr. TAYLOR. If one of the wheels of the automobile dug a hole, which one?

The WITNESS. I don't know which side, right or left.

Mr. BRIGHAM. Did you observe scrape marks on the highway from the point of impact?

The WITNESS. Will you repeat that question? [Question repeated.] No.

Q. Any on the telephone pole?—A. No.

Q. What type of mark did you observe?—A. I didn't see any marks where the car had scraped sideways.

Q. Were the tires flat on either wheel?—A. One was flat, the left rear.

Q. When the Chevrolet was pushed sideways, did you observe any burn mark left on the highway?—A. No.

Q. Did you form the opinion that it had been definitely pushed sideways?—

A. That was the only way that I could see it got there. From what I could see, where this dark mark was, I was looking for that but couldn't see anything to help me.

Q. And was the front part of the truck lifted up?—A. That I don't know. But my experience shows that when a tire comes off it would leave some kind of mark.

Q. How long was this dark mark?—A. It is about 10 or 12 inches long, and made kind of funny, maybe 4 or 5 or 6 inches wide.

Q. Did you notice whether or not the framework of the truck had been bent—no; I mean the frame work of the car, the Chevrolet?—A. No; I did not see that. Officer Davenport was taking care of that and I was making the reports.

Q. Just one other question, Mr. Stibbs; from your experience and observation and investigation of this accident, could you tell which car entered the intersection first?—A. To be my belief, it would be that the car entered the intersection first, I would think that.

Q. Would it be your estimation from what you saw and observed there at the scene that the entire body of the Chevrolet had proceeded across the center lane of the Dixie Highway before the truck hit it?—A. I didn't quite get that.

Q. Would it be your estimation or not from what you saw or observed there at the scene that the Chevrolet had proceeded across the center lane of the Dixie

Highway before it was hit by the truck?—A. I don't think the whole car was across because the truck was travelling right on the line and the truck going west would have hit that car just back of the hood. It is hard to tell just exactly how it did hit it. As it started to turn—

Q. The truck started to turn?—A. Yes; to the right, just before the impact.

Q. Just before the impact?—A. Yes, sir.

Mr. BRIGHAM. Captain [Captain Winstead], do you have any questions you would like to ask?

The WITNESS. Yes; I do.

Captain WINSTEAD (questioning). You have some pictures there; I would like to have them in the evidence, Judge.

Mr. BRIGHAM. Let's show these pictures, Judge.

Judge SUTTON. Let's make these part of the evidence, and mark them "Nos. 4, 5, 6, 7, 8, 9, 10, and 11." Let me mark the rest of those, Mr. Stibbs, will you? [Photographs turned over to Judge Sutton by Mr. Stibbs.] Now show these as Nos. 12, 13, 14, 15, and 16. Now we are ready to proceed any time you are.

Captain WINSTEAD. After they look at these pictures I want to ask them questions about them. [The jury inspects the pictures.]

JUROR. Judge, some of these are not marked.

Judge SUTTON. Mark these 17 and 18 and put them in evidence.

Mr. BRIGHAM. Did you examine the pole to know what damage had been done to the pole?

The WITNESS. I did not look at it. They took the car away while I was there and before I knew, it was gone.

Q. There seems to be a little confusion about whether or not the truck; that is, the car got into the pole.—A. As I stated, the truck stopped 12 feet away from the pole. It would be about 12 feet from the car to the truck and then the width of the car from the pole would be about 12 to 15 feet.

Q. Had the truck gone into the pole?—A. I said it wasn't. In other words he stopped about 12 feet from the pole, about 12 to 15 feet.

Q. In other words, the force of impact of the truck after it stopped 15 feet away was sufficient to knock the car into the pole.—A. That seems the way it happened unless the car was moved. You asked me my opinion. Unless the car was moved and the momentum was great enough to push it and it rolled on over.

Q. The momentum from the truck?—A. Yes. I have seen two cars come together one traveling slow and the other fast and it would turn the fast car over and do no damage to the other.

Q. Was there any evidence in this case of the car turning over?—A. No.

Q. Was there any evidence that it was squeezed into the pole?—A. It seemed like the truck hit it.

Q. And from the point of its hitting it, it knocked it over against the pole?—A. Yes; that is right.

Captain WINSTEAD. As I understand it, it could have happened that with the speed of the passenger car when it hit the truck, it bounced off the truck and into the pole; is that right?

The WITNESS. I don't know whether it was the impact of the truck or the speed of the car. It could have been either one.

Mr. BRIGHAM. Did Officer Tucker get on the scene before you did?

The WITNESS. No; after. I might say that car 19 got the call to make the report. Car 20 came up as we were arriving on the scene, and it was sent to assist with the traffic. That was Officer Hill and Officer Sherman.

Q. That was five police officers on the scene; is that right?—A. Yes.

Captain WINSTEAD. About photographs Nos. 4, 17, and 18, I think you wanted to explain something about the skid marks there?

The WITNESS. On exhibit 18 here; what do you want to know?

Q. You said something about skid marks there?

The WITNESS. There is a skid mark on exhibit 18 at the left of the truck mark. It has no bearing at all with the truck.

Mr. TAYLOR. In other words it was there before that night?

The WITNESS. Yes; it was there and it didn't come from the truck, unless he came between the time of the accident and the time we got there, it was done before the accident.

Captain WINSTEAD. I may have misunderstood you in the examination as to the distinction of what you call a burn and what you called a skid mark?

The WITNESS. A skid mark and a burn are different because a skid mark is when you apply the brakes and leave a dark mark and a burn is when you have a dragging brake. I don't know exactly how to make that clear; one is very lightly marked and one is heavily marked.

Mr. TAYLOR. Which is the heavy mark? Is the burn where he slides the brakes are locked?

The WITNESS. No; that is the skid. He would not have to slide. If he slid he would not have to leave a tire mark. When you lock the brakes you have got a skid.

Captain WINSTEAD. Does exhibit 4 show what you mean?

The WITNESS. Yes.

JUROR. Was there any interval between the skid marks and the burns?

The WITNESS. Yes.

Q. In your testimony you said it looks as if the man had applied his brakes twice; is that right?—A. Yes.

Q. Then the burn would have occurred first and an interval and then the skid marks, is that right?—A. Yes.

Q. How far is that?—A. 3 or 4 feet. In other words, you see a mark there, then it eases up and then goes back into the mark. Can I make this clear? I have not seen any evidence where the truck wheels was locked.

JUROR BRIGHAM. What I want to know is this, where the wheels were locked you say there was an interval between the two marks—in other words, you think he put his brakes on normally and then applied them again?

The WITNESS. Yes; that I can't tell you.

Q. Was that an air brake or mechanical brake?—A. That I can't tell you.

Mr. TAYLOR. Was there a mark on the highway?

The WITNESS. Faint marks. There was 8 or 9 feet which was where the brakes started to go on and then they were released and then they went on again.

Q. Then there was a mark all the way and one was faint and the other darker?—A. Yes.

Mr. BRIGHAM. Your testimony showed that there was both burn marks and skid marks on the highway laid down by the truck. Now what I want to know is after the burn marks stopped and the skid commences was there any part of the highway in between those two points that had neither burn nor skid marks on it. In other words, any clear spaces on it?

The WITNESS. I can explain that by saying it goes into a burn and then it lightens up. There would be several reasons why a space in there before it went in between there.

Q. Was there such a space?—A. Yes.

Q. How long, in your opinion?—A. Maybe 4 or 5 feet, it was lighter.

Q. But was there a continuous burn mark all the way along there?—A. Yes; all the way along.

Mr. TAYLOR. The driver of the truck did not tell you how long the green light had been on before he entered Seventeenth Avenue, did he?

The WITNESS. No; he said he had the green light on in his favor.

Mr. BRIGHAM. We have no other questions, Judge.

Judge SUTTON. Any questions from the jury? [Answered negatively.]

Mr. TAYLOR. Mr. Stibbs, you have had considerable experience with people dying in accidents; haven't you?

The WITNESS. Yes.

Q. In your opinion what caused the death of Mr. Williams and Mr. Popwell?—A. This accident.

Mr. TAYLOR. That is all.

Judge SUTTON. All right, the only other witness we have are the driver of the truck and the sergeant.

Mr. TAYLOR. You can't compel the driver to testify. It would be optional with him as to whether he wants to testify. You can have the rider.

Captain WINGATE. Can I speak to the driver a moment?

Mr. TAYLOR. Yes, sir.

Captain WINGATE (addressing the driver, Glenn W. Morris). Are you willing to testify in this case?

The WITNESS. Yes; I am.

Mr. TAYLOR. I think you should release the man from the subpoena, then he can testify in the proceedings, if he wishes.

(Witness Stibbs dismissed.)

Whereupon Glenn W. Morris was called as a witness.

Judge SUTTON. Mr. Morris, did you come here on a subpoena?

The WITNESS. Yes.

Judge SUTTON. At this time I want to release you from that subpoena so that you will be able to testify not as a subpoenaed witness.

The WITNESS. I would like to tell all I know.

Thereupon, Witness Glenn W. Morris was duly sworn, and testified as follows:

Questioning by Mr. TAYLOR:

Under the laws of the State of Florida, you cannot be made a witness against yourself. You have the right to refuse to answer or incriminate yourself in any way whatsoever and you have the right to get legal advice. Any answers you give must be purely voluntarily on your part, and you don't have to open your mouth if you don't want to.

Judge SUTTON. Any testimony you might offer can be used for or against you.

The WITNESS. I want to tell what I know.

Q. Were you sworn?—A. Yes; I was sworn.

Q. And you want to testify?—A. Yes.

Whereupon the witness was resworn, and testified as follows:

Judge SUTTON. What is your name?

The WITNESS. Glenn W. Morris.

Q. What is your address?—A. Army air base, Homestead, Fla.

Judge SUTTON. Mr. Morris, I think the best way for you to give your testimony would be for you to make a statement as to what happened and if these gentlemen want to bring out further facts, they can ask questions later.

The WITNESS. I will start when we left Miami. I was looking for some of the boys and it was getting late, so I started south on the Dixie Highway and came to the intersection at Seventeenth Avenue and noticed this light was green and slowed down a little to see if the light was going to change against me and saw the light was going to remain green and released my brakes, then this other car came up from my left. It did not seem like he saw the light at all. Before the crash I tried to wheel to my right in order to prevent the crash and that must have put him right into the pole. I applied all the brakes I had and tried to get hold of the emergency. After the crash I pushed the car into the pole and backed up just a little and staff sergeant and myself jumped out and looked at the two people in the car and saw one was still in the seat and we said "Let's don't bother him" as the other looked more seriously injured and we tried to find someone to go after an ambulance. I went one way looking for a car and the sergeant went the other way and awhile later someone drove by. I don't know who it was, but the sergeant sent him after an ambulance, and that is about all I can say pertaining to the wreck.

Judge SUTTON. How fast were you traveling?

The WITNESS. Approximately 25; I don't think I was going any over that.

Q. What kind of brakes did you have?—A. Air-pressure brakes, hydraulic.

Q. Again, how far were you from the car when you first saw the car?—A. Well, it was about 10 or 12 feet to my left when I saw him first. It was just like he jumped in front of me and I made an effort to turn to my left, but we struck before I could hardly turn.

Q. Are you positive, Mr. Morris, that you had a green light as you approached that intersection?—A. Yes; I am quite positive.

Q. Have you traveled that highway before?—A. Yes.

Q. Would you say you are familiar with it?—A. No; not familiar, but I have been over it several times, traveling from here to Homestead.

Q. From Miami to Homestead?—A. Yes.

Q. How long have you been handling this type of equipment?—A. About 3 months.

Captain WINSTEAD. What size truck was it?

The WITNESS. Two and one-half ton.

Q. Is it relatively easy or hard to lock the wheels on that size truck?—A. On that size truck it is a little hard to lock any wheels on it.

Q. Did you see enough of the other car to estimate how fast it was going?—A. No; I couldn't tell. I could not give any definite estimate, but he was traveling at a very high speed. He was just off to the left and it seemed that instantly he was in front of me.

Judge SUTTON. Any further questions, Captain?

The WITNESS. No.

Mr. BRIGHAM. Mr. Morris, from the time that your truck struck the Chevrolet did you lose contact with the Chevrolet at all before it hit the pole?

The WITNESS. I don't think I did; no, sir.

Q. And the Chevrolet was pushed sideways into the pole?—A. Yes, sir.

Q. And then ricocheted between the truck and the pole?—A. That I would imagine; yes, sir.

Q. That is your observation?—A. Yes, sir.

Q. Was the truck loaded or empty?—A. Empty.

Q. Does it weigh 2½ tons empty?—A. I really don't know what the weight is empty.

Q. But it has a 2½-ton capacity?—A. Yes.

Q. How many wheels did it have?—A. Ten.

Q. Do hydraulic brakes apply on all 10 wheels?—A. I am quite sure they do, but I would not say positively.

Q. In driving have you driven this same truck before?—A. Several of this type.

Q. Was this the first occasion you drove this particular truck?—A. No; I drove this one from Ohio here.

Q. What has been your experience in reference to how many wheels the pressure on the brakes affects?—A. I have had no occasion to find out. The brakes were always good. I couldn't tell whether the pressure was on all 10 wheels or not. I imagine it was.

Q. Were you a mechanic before joining the forces?—A. No.

Q. What business were you in?—A. Photography.

Q. Had you had any experience before you entered the service in driving equipment of this kind?—A. Well, I had driven a truck before.

Q. What type?—A. A ton and a half.

Q. Where?—A. I worked for United States engineers and drove a truck for them awhile.

Q. Was that immediately prior to your entering the service?—A. Eight or ten months prior.

Q. What type of work did you say you were engaged in?—A. Photography.

Q. In other words, you had dropped your work and gone into photography.—A. Yes.

Q. Now your estimation of the speed of the Chevrolet, I believe you said it was 12 feet away before you saw it, at that time could you tell us how far east of the intersection you were?—A. How far east; I was traveling from east to west and—I would say I was approximately not over 10 feet from the intersection.

Q. About 10 feet?—A. Yes; going into the intersection.

Q. Your best recollection is that you were approximately 10 feet east of the intersection when you first saw the car?—A. Yes; when I first saw the car.

Q. Now, the car—the car was about 12 feet I believe you said to your left?—A. Yes.

Q. Had he entered the intersection, had the Chevrolet entered it at that time?—A. It was just as if a bulk had jumped up in front of the truck, that is the way it happened.

Q. Do you know approximately how wide the Federal highway is at that point?—A. No; only that Mr. Stibbs says it is about 40 feet wide.

Q. Well, if your judgment is that he was approximately 12 feet to your left when you first saw him, the car then, he would have been in the intersection; would he not, sir?—A. Yes; I imagine he would have been, sir.

Q. Now what position was the car in with respect to the right or left side of the Federal highway when the impact occurred?—A. You mean about what part of the road was he in—whether he was on the right or left?

Q. Yes; are you familiar with the north-and-south directions of the highway?—A. No.

Q. Well, in respect to your right or your left-hand side of the highway was the Chevrolet car in, at the time of the impact, on your right-hand side of the highway or your left-hand side?—A. At the time of impact he was on the right-hand side of the highway, naturally that would throw him over into the right-hand side.

Q. Can you give us any idea about how far over on the right-hand side he was at the time of the impact?—A. No; I cannot. It just happened so suddenly.

Q. But you are correct in your recollection that he was on your right-hand side?—A. Yes.

Q. Now with respect, Mr. Morris, to the left- or right-hand side of the driver of the Chevrolet car, at the time of the impact, was he on his left- or right-hand side of Seventeenth Avenue, that is the street that crosses across the Federal highway?—A. I could not say positively about that, the light being so dim, and you can't hardly estimate those things and in the excitement I didn't look for that.

Q. You have no recollection as to whether the driver was on his right- or left-hand side?—A. No.

Q. Do you have a speedometer on that truck?—A. Yes.

Q. Do you recall whether or not you were looking at it?—A. No; I wasn't looking at it.

Q. You base your estimate, I take it, therefor, on your experience you have had with this type truck?—A. Yes, sir.

Q. And about what speed do you estimate you were going?—A. I estimate about 25 miles per hour. I don't believe I would have possibly been going over that.

Q. Now, did you—where did you commence your journey from?—A. From Homestead to Miami.

Q. No; I mean coming out the highway, south.—A. Coming out we left from the beach, we were looking for some fellows—

Q. You were hunting some of the boys in your squadron?—A. Two of them we knew of and thought some more of them were in town.

Q. You were cruising around looking for them?—A. Yes.

Q. And the only one you could find was the sergeant?—A. No; he was with me.

Q. But you didn't find any others?—A. No.

Q. Do you know where the sergeant got his drink that night?—A. No.

Q. Did he have it when he left Homestead with you?—A. No; I didn't know it was in the truck until after the accident.

Q. How long was it in the truck?—A. None that I know of.

Q. You said you did not know it was in the truck?—A. No; I didn't know anything was there at all.

Q. How much was there?—A. After they brought it to the station it looked about one-half bottle.

Q. Good or bad?—A. I don't know.

Q. Didn't you examine the label on the bottle, was it White Horse or white mule or what kind?—A. I couldn't tell.

Q. What kind of bottle was it?—A. I don't know whether it was dark or light. They just brought it into the station and set it on the table.

Q. Do you know where they got it from?—A. No, sir; I don't.

Q. Do you know whether it was whisky, beer, or wine?—A. No; but it looked like wine to me from the looks of the bottle.

Q. What did the bottle have on it?—A. Just by its dark color.

Q. Liquor is dark sometimes, isn't it?—A. No; I don't think so.

Q. You haven't seen any of a dark color?—A. Just a slightly red color.

Q. Was it a quart bottle?—A. Yes; I think it was.

Q. About half gone?—A. Something like that.

Q. Did the sergeant tell you that he had had any drinks out of that bottle?—A. No.

Q. Do you know where he had it located?—A. No.

Q. You didn't know where he was taking care of it so that it wouldn't get lost?—A. Not until after the accident.

Q. Now about how far east of the light were you when you first noticed that it was a green light?—A. Well, it was quite a way off—just by estimation I could say more than 40 or 50 feet behind the light. I glanced at it and saw it was green and slowed down to be sure it would remain green. I had the truck slowed down and saw it was going to remain green and speeded up and about that time this car jumped up in front of me.

Q. You didn't see it turn green?—A. No; when I looked at it, it was already green.

Q. And the first time you looked at the light was about 50 feet east of the intersection?—A. That would be an estimation.

Q. That is your judgment on the matter?—A. Yes.

Q. Now, at that time, can you give an estimation of your speed?—A. Well, I was possibly going around 30 at that time, but I began to apply the brakes.

Q. Did you apply them hard enough to know whether that application of the brakes would leave a burn mark on the highway?—A. I could not say as I didn't know what they mean by burn marks, except it is the heavy tread of the tires.

Q. From your experience of this particular type of equipment, would you say that, based on your experience, that your application of the brakes would leave a burn mark?—A. I don't know.

Q. Then when you saw the car to your left about 12 feet, you say, or 10 feet when you approached from the east intersection, was that the time you applied your brakes?—A. Yes; just as quickly as I could get my foot from the accelerator to the brakes.

Q. And you could not tell that your tires were skidding from slowing?—A. I couldn't tell, but I suppose they * * *

Q. Have you any estimation based on your experience with equipment of this type how quickly your truck can stop, let us say, if you are going 25 miles per hour?—A. No; I have not. I have never tried.

Q. Mr. Morris, did you release your brakes after the impact?—A. Not that I know of. My foot might have slipped as I reached for the emergency brake.

Q. When you were still trying to stop the truck?—A. Yes.

Q. Is it your impression that you maintained all the pressure possible continuously?—A. Yes.

Q. Would the emergency brake have had any effect?—A. I don't believe it would have?

Mr. TAYLOR. Taking the east side of the avenue, how far were you from the avenue when you first noticed the light was green?

The WITNESS. It was approximately 50 or 60 feet.

Q. How far do you think you are sitting from the side of that next building over there?—A. It might be about 10 feet.

Q. I mean to that next building?—A. Oh, about 25 feet.

Mr. TAYLOR. I never was good at judging distance. Did you see it change from yellow to green?

The WITNESS. No; it remained green at all times I was looking at it.

Mr. BRIGHAM. What time did you have to be in Homestead at camp that night?

The WITNESS. We do not have any specific time to be back. We were going back early since we couldn't find the boys.

Q. Do you have any regulations that require you to be in camp at any certain hour?—A. Yes; we have a curfew at 11 o'clock.

Q. And what time was this?—A. Well, the wreck occurred around 8:40 p. m.

Q. Had you stopped any place at the beach at all?—A. Yes; we stopped at several places looking for the men.

Q. Do you know what time you left Homestead?—A. Between 4 and 5 o'clock.

Q. Did you have any way of getting anything to eat when you got back to camp?—A. Yes; midnight supper.

Q. Is that served at 12?—A. Anytime we get back until 12.

Q. I presume you and the staff sergeant were getting hungry?—A. We had eaten dinner.

Q. What time?—A. About 12:30.

Q. Army men don't get hungry down there?—A. There is no reason to.

Q. In other words, the noon meal is about in the middle of the day and supper is served until about 12 o'clock at night?—A. Yes, sir.

Q. You didn't stop any place coming from the beach until you had the accident?—A. No.

Q. Did you notice the light at any time driving along the highway until before you noticed it when it was green?—A. I hadn't noticed it.

Judge SUTTON. Do you want to have the sergeant now?

Mr. TAYLOR. Yes. (Witness dismissed.)

Whereupon, Joseph Hockevar was called as a witness, and having been duly sworn, testified as follows:

Questioning by Mr. TAYLOR:

Q. What is your name?—A. Joseph Hockevar, Homestead Air Base, temporarily.

Q. Were you with Mr. Morris at the time of the accident?—A. Yes.

Q. How much had you had to drink? A. Approximately one-half pint of wine.

Q. How long before the accident had you had the last drink?—A. About a half hour.

Q. Were you sober?—A. Yes.

Q. Did you see the light?—A. Yes; as we approached it, Morris slowed up and the light was green.

Q. Before you saw it, did it change to green?—A. I don't know.

Q. Were you dozing or sleeping?—A. Yes; I was dozing.

Q. Did you see the car approach from the left?—A. No.

Q. How far was it away when you first saw it?—A. I looked up out of the window and it was directly in front of us then. I never saw it move.

Q. Did the car crash against the pole?—A. I didn't see that. When I looked up again we had stopped and I got out. The civil car was up against the pole at that time.

Q. Did the truck back up to get away from the car?—A. Yes, at the time I got out, Mack backed up.

Q. Did you hear any horn sound?—A. No; I didn't hear a horn.

Q. Was the lights still burning in the civil car after the accident?—A. I never noticed that.

- Q. You didn't turn them off?—A. No.
- Mr. BRIGHAM. Did I understand you correctly to say you had 2½ pints to drink?
- The WITNESS. No; between one-half and one pint.
- Q. Where were you when you were drinking?—A. We stopped for relief and at that time I had it.
- Q. Where was that?—A. On the highway, on the outskirts of town.
- Q. Do you remember crossing a bridge on the Miami River?—A. Yes.
- Q. Was that before or after that that you stopped?—A. Before.
- Q. Did he stop to relieve himself right in the middle of town?—A. It was dark.
- Q. And at that time you drank how much?—A. Two drinks.
- Q. Where did you keep the bottle?—A. Up in the back, behind where I was sitting.
- Q. On a shelf?—A. No; where the seat comes up in back there is a space of about 4 inches.
- Q. Is that the bottle the police got?—A. It must have been.
- Q. What size bottle was it?—A. A fifth.
- Q. A fifth of a pint or a quart?—A. A quart.
- Judge SUTTON. You mean one-fifth of a gallon?
- The WITNESS. Yes.
- Judge SUTTON. That is the way they divide a gallon.
- Mr. TAYLOR. When did you start to drink wine?
- The WITNESS. About 7 p. m. in the evening.
- Mr. BRIGHAM. Where did you buy it?
- The WITNESS. I don't remember; the town is new to me.
- Q. Well, did you buy it on this trip?—A. Yes.
- Q. In Miami?—A. Yes; in Miami.
- Q. And how much of this did Mr. Morris have?—A. Not any. He didn't know I had it.
- Q. How much did you drink?—A. Between one-half and 1 pint.
- Q. And you didn't offer him any?—A. No.
- Q. What kind of wine was it?—A. Port.
- Judge SUTTON. Any questions from the jury? (Answered negatively.)
- Witness dismissed.
- Whereupon G. T. Gaunt, having been duly sworn, testified as follows:
- Questions by Mr. Brigham:
- Q. What is your name?—A. G. T. Gaunt.
- Q. What is your business?—A. Farming.
- Q. How long have you lived in Dade County, Fla.?—A. I was born here in 1900. I have since 1920 lived in Collier County.
- Q. Mr. Gaunt, what relation if any was Mr. Popwell to you?—A. He and I married sisters.
- Q. Did you see him after the accident?—A. Yes; at the undertaking parlor; I didn't see him in the hospital. I live in the next county and didn't know about it until 2 or 3 hours after.
- Q. And at the time you saw him he was deceased?—A. Yes.
- Q. Did you see the car?—A. Yes.
- Q. Did you get it released from the police station?—A. Yes.
- Q. What was the condition of the car?—A. When I first saw the car, Mrs. Popwell's brother and I went to examine it and went to see whether it was worth paying the charges. It was stored in a garage on West Flagler Street. The police had it picked up from the scene of the accident and put it there. The car was struck directly in the middle and you could tell the truck had hit it on the right side, and on the left side it had a dent from the telephone pole.
- Q. Was the chassis of the car bent?—A. Yes; all out of shape and the frame was bent. The ordinary width of the top of the car would be about 4½ feet and it had been reduced to about 2 feet from the impact of the pole and the truck. One of the doors was torn completely off the car and it was damaged a little but the other one was bent all up.
- Mr. BRIGHAM. Any questions?
- JUROR. How long after the accident did you see the car?
- The WITNESS. Next day.
- Judge SUTTON. It is your opinion that Mr. Popwell died as the result of this accident?
- The WITNESS. Yes.
- That is all. [Witness dismissed.]

Thereupon, there being no further witnesses to offer testimony in the case, the coroner charged the jury as follows:

"Contrary to the usual procedure, we will leave you gentlemen in here to consider your verdict, and you should, if it is possible, deliberate how and in what manner these two men came to their deaths, and if they came to their deaths in and as the result of any negligence of any person and if so, you should state what person, and if not, in what way they met their deaths and by whose negligence." "When you are ready, call me and I will come in."

Thereupon, the inquest on the dead bodies of Spencer W. Popwell, Jr., and Robert A. Williams was concluded.



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